

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

CHRISTOPHER W. WEBB,

Plaintiff,

v.

BILL STURCH, et al.,

Defendants.

No. CIV 10-455-FHS-SPS

OPINION AND ORDER

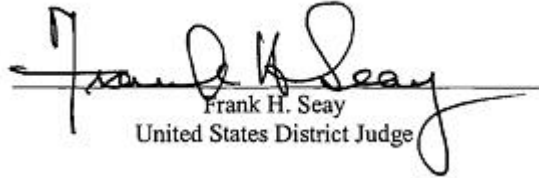
On March 1, 2012, the court directed Defendants Sturch, Holt, and Kidman to submit an amended special report, and they also were granted leave to file another dispositive motion. Because plaintiff alleges he has exhausted his administrative remedies, as required by 42 U.S.C. § 1997e(a), the defendants were further directed to advise the court, both in the amended special report and in any dispositive motion, their position on this issue. *See Norton v. The City of Marietta, Okla.*, 432 F.3d 1145, 1150 (10th Cir. 2005) (“The statutory language is plain and unambiguous: no ‘prisoner confined in a jail, prison, or other correctional facility’ may bring a suit concerning prison life until he first exhausts his administrative remedies.”).

The defendants filed an amended special report as directed, but their motions to dismiss failed to make any reference to the special report, especially with regard to exhaustion of administrative remedies. The threshold issue of exhaustion must be addressed before other bases for dispositive relief may be entertained. *See Porter v. Nussle*, 534 U.S. 516, 524, 532 (2002) (holding that § 1997e(a) makes exhaustion “mandatory” for “all inmate suits about prison life”). Moreover, the court cannot convert the motions to dismiss to motions for summary judgment, pursuant to Fed. R. Civ. P. 12(d), because the motions to dismiss do not present matters in the amended special report.

ACCORDINGLY, the defendants’ motions to dismiss [Docket Nos. 44, 45, and 46]

are DENIED, and Defendants Sturch, Holt, and Kidman are granted 21 days to file an appropriate dispositive motion that addresses the question of exhaustion of administrative remedies and any other pertinent information in the special report.

IT IS SO ORDERED this 21st day of March, 2013.



Frank H. Seay
United States District Judge